

IN THE MATTER OF:)
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LPL FINANCIAL LLC,)
)
)
RESPONDENT.) Docket No. E-2019-0041
)

I. PRELIMINARY STATEMENT

On June 25, 2019, LPL submitted an Offer of Settlement (the “Offer”) to the Division. Solely for the purpose of this matter’s resolution, LPL neither admits nor denies the Statement of Facts set forth in Section V and neither admits nor denies the Violations of Law set forth in Section VI below, and consents to the entry of this Order by the Division, consistent with the Offer, settling the investigation hereby with prejudice.

1. As provided for by the Act, the Division has jurisdiction over matters relating to securities pursuant to chapter 110A of Massachusetts General Laws.

2. The Offer was made and this Order is entered in accordance with MASS. GEN. LAWS ch. 110A. Specifically, the acts and practices investigated took place in Massachusetts.

III. RELEVANT TIME PERIOD

3. Except as otherwise expressly stated, the conduct described herein occurred during the approximate time period of March 1, 2013 to April 4, 2019 (“Relevant Time Period”).

IV. RESPONDENT

4. LPL Financial LLC (“LPL”) is a broker-dealer and investment adviser with a principal executive office in Massachusetts. LPL has a Financial Industry Regulatory Authority (“FINRA”) Central Registration Depository (“CRD”) number of 6413. LPL has been registered in Massachusetts as a broker-dealer since July 31, 1981 and notice-filed as a federal covered adviser since April 14, 1994.

V. STATEMENT OF FACTS

A. Background

5. LPL is a broker-dealer that conducts a general securities business.
6. LPL is the largest independent broker-dealer in the United States and has been registered as a broker dealer in Massachusetts since July 31, 1981.
7. A registered broker-dealer in Massachusetts is required to follow FINRA member conduct rules¹ and to comply with the Act and the Regulations.

¹ 950 MASS. CODE REGS. 12.203(3)(a).

8. After a broker-dealer has been registered in Massachusetts, it may seek to register agents that intend to conduct securities business in Massachusetts or with Massachusetts customers.²
9. A broker-dealer must register its agents in Massachusetts before its agents are permitted to conduct securities business in Massachusetts.³
10. A broker-dealer that seeks to register agents in Massachusetts must file a Uniform Application for Securities Industry Registration or Transfer ("Form U4") on the CRD.
11. After filing a Form U4 for an agent, broker-dealers are required to amend the Form U4 if certain information regarding the agent changes.⁴
12. Such amendments are required to be made no later than 30 days after learning of the facts or circumstances that require an amendment.⁵
13. For example, if the answers to the disclosure questions in Section 14 of Form U4 become inaccurate at any time, the agent's broker-dealer is required to amend the Form U4 filing on the CRD.
14. In order to terminate an agent's registration in Massachusetts, the broker-dealer must file a Uniform Termination Notice for Securities Industry Registration ("Form U5").

² See 950 MASS. CODE REGS. 12.202(2)(b).

³ See MASS. GEN. LAWS ch. 110A, §§ 201(a)-(b).

⁴ Article V, Section 2(c) of FINRA's By-Laws states that Form U4 must "be kept current at all times by supplementary amendments."

⁵ Article V, Section 2(c) of FINRA's By-Laws states that amendments must be made "not later than 30 days after learning of the facts or circumstances giving rise to the amendment."

15. After filing a Form U5 for an agent, the broker-dealer is required to amend the Form U5 within 30 days of notice if certain information regarding the agent changes.⁶
 16. The filing of amendments to update the records of agents is within the supervisory responsibilities of the broker-dealer.⁷
 17. During the Relevant Time Period, LPL failed to timely register with the Division (or maintain the registration of) certain of its agents required to be registered in Massachusetts. LPL also failed to properly amend Forms U4 and U5 for agents who were registered in Massachusetts that subsequently became materially inaccurate or incomplete.
- B. LPL did not register agents who were required to be registered in Massachusetts.**
18. Pursuant to Section 201 of the Act, it is “unlawful for any person to transact business in this commonwealth as a broker-dealer or agent unless he is registered under this chapter.”⁸
 19. As of May 9, 2019, LPL had 4,219 agents registered in Massachusetts.
 20. In addition to its registered agents, LPL had 651 agents⁹ who were required to be registered in Massachusetts, but were not registered in Massachusetts, during some or all of the Relevant Time Period.
 21. Of the 651 unregistered agents, 284 are subject to reportable events as reported on the CRD.

⁶ Article V, Section 3(b) of the By-Laws provides that, should a firm learn of facts or circumstances that cause Form U5 to become inaccurate or incomplete, the firm shall amend Form U5 “not later than 30 days after the member learns of the facts or circumstances giving rise to the amendment.”

⁷ 950 MASS. CODE REGS. 12.203(5)(d).

⁸ MASS. GEN. LAWS ch. 110A, § 201(a).

⁹ See MASS. GEN. LAWS ch. 110A, § 401(b) and 950 MASS. CODE REGS. 14.401 Agent for the definition of agent.

22. LPL's failure to seek initial registration of these agents in Massachusetts (or maintain their registration in Massachusetts) prevented the Division from reviewing the agents' qualifications and disclosure histories in its effort to protect Massachusetts investors.

C. LPL failed in its duty to supervise its Massachusetts agents.

23. LPL had agents who transacted business with Massachusetts customers without registering those agents in Massachusetts.
24. From December 5, 2014 until at least November 26, 2018, LPL's Written Supervisory Procedures stated:

8.2. Prospect Procedures & Completing Form U4

All financial advisors [*i.e.*, agents] must be properly registered in each state where they offer securities advice, solicit the purchase or sale of securities, send correspondence or otherwise transact securities business.

25. Of the 651 unregistered agents, 441 were the LPL financial adviser of record to one or more Massachusetts customers during some or all of the Relevant Time Period.
26. Although LPL had policies and procedures in place that required agents to be registered in Massachusetts prior to conducting securities business, LPL failed to enforce those policies and procedures.
27. Some of LPL's agents supervised other LPL agents with Massachusetts customers without LPL registering those agents in Massachusetts.
28. From December 5, 2014 until at least November 26, 2018, LPL's Written Supervisory Procedures stated:

8.1.2. Associated Persons

Additionally, OSJ branch managers must be securities registered in all states that the advisors they supervise are registered in.

29. Of the 651 unregistered agents, 210 acted as supervisors to one or more agents with customers in Massachusetts during some or all of the Relevant Time Period.
30. Although LPL had policies and procedures in place that required agents acting as supervisors to be registered prior to conducting business in Massachusetts, LPL failed to enforce those policies and procedures.
31. In addition to LPL's own policies and procedures requiring agent registration in Massachusetts, LPL was informed at least 67 times by the Division between January 1, 2017 and December 18, 2018, that certain supervisors met the definition of agent pursuant to 950 MASS. CODE REGS. 14.401 and therefore must be registered in Massachusetts.
32. Despite the Division's notifications and LPL's own policies and procedures, LPL thus failed to ensure that all of its agents were registered in Massachusetts before they began offering securities advice, soliciting the purchase or sale of securities, sending correspondence, otherwise transacting securities business, or supervising an individual who did any of the foregoing activities in Massachusetts.

D. LPL failed in its duty to timely file reportable events.

33. As early as February 2013¹⁰ and as recently as January 2018¹¹, LPL acknowledged its duty to timely amend Forms U4 and U5 in the firm's Advisor Compliance Manual.

¹⁰ Extract – Advisor Compliance Manual 2013-02-04, 45-50.

¹¹ Extract – Advisor Compliance Manual 2018-01-06, 22-26.

34. During the Relevant Time Period, LPL filed late amendments to Forms U4 or U5 in connection with 787 reportable events related to its Massachusetts agents.
35. Of the 787 late filings, 586 were more than 60 days late.
36. The late filings include 208 customer complaints, nine terminations, nine regulatory actions, 12 criminal events, one internal review, 451 judgments or liens, as well as 97 bankruptcies and compromises.
 - i. **LPL failed to timely amend Form U4 for its agents.**
37. In connection with its Massachusetts-registered agents, there were 122 customer complaints that required amending Form U4.
38. LPL disclosed 63 customer complaints that required reporting between one and 29 days late.
39. LPL disclosed 10 customer complaints that required reporting between 30 and 59 days late.
40. LPL disclosed 49 customer complaints that required reporting 60 or more days late.
41. There was one termination that required reporting on Form U4, which LPL disclosed between one and 29 days late.
42. There were nine regulatory actions that required amending Form U4.
43. LPL disclosed six regulatory actions that required reporting between one and 29 days late.
44. LPL disclosed three regulatory actions that required reporting 60 or more days late.
45. There were 12 criminal events that required amending Form U4.

- 46. LPL disclosed three criminal events that required reporting between one and 29 days late.
- 47. LPL disclosed nine criminal events that required reporting 60 or more days late.
- 48. There were 451 judgments or liens that required amending Form U4.
- 49. LPL disclosed 40 judgments or liens that required reporting between one and 29 days late.
- 50. LPL disclosed 14 judgments or liens that required reporting between 30 and 59 days late.
- 51. LPL disclosed 397 judgments or liens that required reporting 60 or more days late.
- 52. There were 97 bankruptcies/compromises that required amending Form U4.
- 53. LPL disclosed 11 bankruptcies/compromises that required reporting between one and 29 days late.
- 54. LPL disclosed three bankruptcies/compromises that required reporting between 30 and 59 days late.
- 55. LPL disclosed 83 bankruptcies/compromises that required reporting 60 or more days late.
- ii. LPL failed to timely amend Form U5 for agents.**
- 56. There were 86 customer complaints that required amending Form U5.
- 57. LPL disclosed 33 of the customer complaints that required reporting between one and 29 days late.
- 58. LPL disclosed 11 of the customer complaints that required reporting between 30 and 59 days late.

- 59. LPL disclosed 42 of the customer complaints that required reporting 60 or more days late.
- 60. There were eight terminations that required filing or amending Form U5.
- 61. LPL disclosed six terminations that required reporting between one and 29 days late.
- 62. LPL disclosed two terminations that required reporting 60 or more days late.
- 63. There was an internal review that required amending Form U5 that was filed 60 or more days late.

E. The Division relies on accurate and timely filed Forms U4 and U5.

- 64. As stated above, broker-dealers have a duty to ensure that Forms U4 and U5 are kept up-to-date and accurate.
- 65. In connection with the registration process for agents and representatives, the Division relies on broker-dealers to timely and accurately disclose reportable events on Forms U4 and U5.
- 66. After an agent is registered, the Division relies on broker-dealers to timely file amendments to Forms U4 and U5 to properly conduct internal investigations and respond appropriately to any questions or complaints that may arise.
- 67. Information that is not timely or accurately reported on the CRD has a negative impact on determining which agents require additional review, either during or after the registration process.
- 68. LPL's failure to provide accurate and up to date information regarding its agents and their reportable events deprived Massachusetts investors the opportunity to effectively evaluate LPL's agents when choosing an investment professional.

69. LPL's failures hampered the Division's investor protection efforts.
70. By failing to timely report required disclosure events on Forms U4 and U5, LPL failed to provide information to the Division during the registration process of its agents, including material information that is necessary for the protection of Massachusetts investors.
71. Due to LPL's failures, the Division was unable to review at least 36 specific late disclosures at the time of an agent's application for registration in Massachusetts.
- F. Late disclosures negatively impacted the Division's agent application review.**
72. On January 7, 2016, an LPL agent that had voluntarily terminated employment received a customer complaint related to the agent's securities practices while registered with LPL. The customer complaint alleged unsuitable recommendations from 2002 to 2014. The customer alleged \$6 million in compensatory damages.
73. The agent applied for registration in Massachusetts with another broker-dealer and, without the benefit of knowing the allegations contained in the customer complaint, the Division allowed the application on March 14, 2016.
74. The agent also applied for registration in Massachusetts with the same firm as an investment adviser representative on March 21, 2016. The Division allowed the application on March 22, 2016.
75. On March 23, 2016, LPL filed a late amendment updating the agent's Form U5 to disclose the customer complaint.
76. LPL filed the Form U5 amendment 46 days late.

77. The customer complaint resulted in a settlement in favor of the customer for \$850,000.
78. LPL's failure to timely file the Form U5 amendment disclosing the customer complaint prevented the Division from accurately reviewing the agent's applications for registration in Massachusetts.
79. On January 27, 2012, an LPL Massachusetts-registered agent received a customer complaint alleging an unsuitable investment in a tenancy-in-common. The customer alleged \$1,209,500 in compensatory damages.
80. The agent voluntarily terminated employment from LPL in September 2012 and joined another broker-dealer. The agent returned to LPL in September 2013 and applied for registration in Massachusetts.
81. The agent was allowed as an agent on October 21, 2013.
82. On December 26, 2013, LPL filed a late amendment updating the agent's Form U4 to disclose the customer complaint.
83. LPL filed the Form U4 amendment 303 days late.
84. The customer complaint resulted in a settlement in favor of the customer for \$242,500.
85. LPL's failure to timely file the Form U4 amendment disclosing the customer complaint prevented the Division from accurately reviewing the agent's application for registration in Massachusetts.
86. On November 29, 2011, an LPL registered agent received a customer complaint alleging misrepresentation and unsuitability regarding the exchange of variable

annuities for the purpose of generating a commission for the agent. The customer alleged \$27,085.65 in compensatory damages.

87. The agent voluntarily terminated from LPL and applied for registration in Massachusetts with another broker-dealer. The Division allowed the application on August 31, 2012.
88. On October 11, 2013, LPL filed a late amendment updating the agent's Form U5 to disclose the customer complaint.
89. A Form U4 amendment was never filed, so the Form U5 amendment was filed 653 days late.
90. The customer complaint resulted in a settlement in favor of the customer for \$8,730, all of which was contributed by the agent.
91. LPL's failure to timely file the Form U4 amendment disclosing the customer complaint prevented the Division from accurately reviewing the agent's application for registration in Massachusetts.
92. A person not yet registered as an agent with LPL was notified of a civil judgment/lien on August 30, 2017.
93. On November 29, 2017, LPL submitted an inaccurate Form U4 to register the person as an agent in Massachusetts. The agent was allowed on the same day.
94. On July 20, 2018, LPL filed a late amendment to Form U4 disclosing the agent's judgment/lien.
95. LPL's failure to timely file the Form U4 amendment disclosing the judgment/lien prevented the Division from accurately reviewing the agent's application for registration in Massachusetts.

96. A person not yet registered as an agent of LPL had tax judgments/liens dated March 16, 1999, December 4, 2012, July 18, 2016, and April 9, 2018.
97. The April 9, 2018 tax judgment/lien is still outstanding and has not been satisfied.
98. On May 23, 2018, LPL submitted an inaccurate Form U4 to register the person as an agent in Massachusetts. The agent was allowed on the same day.
99. On July 31, 2018, LPL filed a late amendment to Form U4 disclosing all four of the agent's judgments/liens.
100. LPL's failure to timely file the Form U4 amendment disclosing the judgment/lien prevented the Division from accurately reviewing the agent's application for registration in Massachusetts.
101. These specific incidents represent just a small sample of the 752 disclosable events that LPL failed to timely report in connection with the registration of Massachusetts agents.

VI. VIOLATIONS OF LAW

Violations of MASS. GEN. LAWS ch. 110A, § 201(a)

102. Section 201(a) of the Act provides:

It is unlawful for any person to transact business in this commonwealth as a broker-dealer or agent unless he is registered under this chapter.

103. The conduct of LPL, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 201(a).

Violations of MASS. GEN. LAWS ch. 110A, § 201(b)

104. Section 201(b) of the Act provides:

It is unlawful for any broker-dealer or issuer to employ an agent unless the agent is registered. The registration of an agent is not effective during any period when he is not associated with a particular broker-dealer registered

under this chapter or a particular issuer. When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities which make him an agent, the agent as well as the broker-dealer or issuer shall promptly notify the secretary.

105. The conduct of LPL, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 201(b).

Violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J)

106. Section 204(a)(2)(J) of the Act provides:

The secretary may by order deny, suspend, or revoke any registration if he finds (1) that the order is in the public interest and (2) that the applicant or registrant [...]

(J) has failed reasonably to supervise agents, investment adviser representatives or other employees to assure compliance with this chapter[.]

107. The conduct of LPL, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J).

VII. ORDER

IT IS HEREBY ORDERED:

- A. LPL shall permanently cease and desist from further violations of Sections 201(a), 201(b), and 204(a)(2)(J) of the Act in the Commonwealth;
- B. LPL is censured by the Division;
- C. LPL shall seek registration of its employees and supervised persons who meet the definition of agent in Section 401(b) of the Act and Section 14.401 of the Regulations prior to their conducting securities business in Massachusetts, in compliance with Section 201(b) of the Act;
- D. LPL shall provide, within five (5) days of providing certification to FINRA as required in the Letter of Acceptance, Waiver and Consent, No 2016050751901

("AWC"), a copy of the certification provided to FINRA and the written supervisory procedures and systems that were established pursuant to the AWC;

- E. LPL shall make reasonable efforts to further enhance its written supervisory procedures and systems related to the timely filing of reportable events within 90 days' notice by the Division that the written supervisory procedures and systems established pursuant to the AWC are unacceptable to the Division, provided that the Division will not unreasonably withhold its approval;
- F. LPL shall review and enhance its policies and procedures related to registering its agents in Massachusetts prior to an agent engaging in any of the following activities in Massachusetts or for Massachusetts residents: effecting or attempting to effect transactions in securities, soliciting transactions or new accounts, rendering advice concerning the purchase or sale of securities to particular customers, executing trades for particular customers, or supervising an individual that engages in any of the foregoing activities. To the extent policies and procedures do not include methods for enforcement and compliance oversight relating to the registration of its agents, LPL shall establish such procedures;
- G. LPL shall provide, within 90 days of the Order, a report to the Division detailing the process LPL engaged in to enhance its policies and procedures pursuant to paragraph F, section VII, of the Order. The report shall include, at a minimum, a description of the review performed, the conclusions reached, a summary of LPL's changes, and the timeline in which LPL will enact the changes;
- H. The summary of changes that LPL plans to enact and the timeline in which LPL will enact those changes pursuant to paragraph F, section VII, of this Order, shall not be

unacceptable to the Division, provided that the Division will not unreasonably withhold its approval of those changes;

- I. If the changes and timeline are not unacceptable to the Division, LPL shall adopt all changes pursuant to the timeline provided in the report and provide certification within 45 days of the last change made pursuant to the timeline;
- J. Within five (5) business days of the Order, LPL shall pay an administrative fine in the amount of \$1,100,000 (USD) to the Commonwealth of Massachusetts. In determining to resolve this matter in the manner set forth herein, and in determining the appropriate administrative fine, the Division considered LPL's cooperation with the investigation. Payment shall be: (1) made by United States postal money order, certified check, bank cashier's check, bank money order, or wire transfer; (2) made payable to the Commonwealth of Massachusetts; and (3) either hand-delivered or mailed to One Ashburton Place, Room 1701, Boston, Massachusetts 02108, or wired per Division instructions; and (4) submitted under cover letter or other documentation that identifies the payor making the payment and the docket number of the proceedings. Additionally, LPL shall provide the Division with notice twenty-four (24) hours prior to the payment;
- K. LPL shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal or local tax for any amounts that LPL shall pay pursuant to the Order;
- L. LPL shall not seek or accept, directly or indirectly, reimbursement or indemnification, including, but not limited to, any payments made pursuant to any insurance policy, with regard to any amount that LPL shall pay pursuant to the Order;

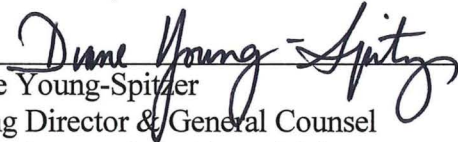
- M. Upon the issuance of the Order, if LPL fails to comply with any of the terms set forth in the Order, the Division may institute an action to have this agreement declared null and void. Additionally, after a fair hearing and the issuance of an order finding that LPL has not complied with the Order, the Division may move to have the Order declared null and void, in whole or in part, and re-institute the associated investigation that had been brought against LPL; and
- N. For good cause shown, the Division may extend any of the procedural dates set forth above. LPL shall make any requests for extensions of procedural dates set forth above in writing to the Division.

VIII. NO DISQUALIFICATION

This Order waives any disqualification in the Massachusetts laws, or rules or regulations thereunder, including any disqualification from relying upon the registration exemptions or safe harbor provisions to which Respondent may be subject. This Order is not intended to be a final order based upon violations of the Act that prohibit fraudulent, manipulative, or deceptive conduct. This Order is not intended to form the basis of any disqualifications under Section 3(a)(39) of the Securities Exchange Act of 1934; or Rules 504(b)(3) and 506(d)(1) of Regulation D, Rule 262(a) of Regulation A and Rule 503(a) of Regulation CF under the Securities Act of 1933. This Order is not intended to form the basis of disqualification under the FINRA rules prohibiting continuance in membership absent the filing of a MC-400A application or disqualification under SOR rules prohibiting continuance in membership. This Order is not intended to form a basis of a disqualification under Section 204(a)(2) of the Uniform Securities Act of 1956 or Section 412(d) of the Uniform Securities Act of 2002. Except in an action by the Division to

enforce the obligations of this Order, any acts performed or documents executed in furtherance of this Order: (a) may not be deemed or used as an admission of, or evidence of, the validity of any alleged wrongdoing, liability, or lack of any wrongdoing or liability; or (b) may not be deemed or used as an admission of, or evidence of, any such alleged fault or omission of LPL in any civil, criminal, arbitration, or administrative proceeding in any court, administrative agency, or tribunal.

**WILLIAM FRANCIS GALVIN
SECRETARY OF THE COMMONWEALTH**

By: 
Diane Young-Spitzer
Acting Director & General Counsel
Massachusetts Securities Division
One Ashburton Place, Room 1701
Boston, MA 02108

Date: June 26, 2019